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 6 CITY OF OAKLAND

7 *Original Filed*
 8 JAN 11 2008
 9 RICHARD W. WIEKING
 10 CLERK, U.S. DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 BEVERLY ALDABASHI, SALEH
 16 ALDABASHI, in his own right and as
 17 guardian *ad litem* guardian *ad litem* on
 behalf of his minor son, SALEH "JULIAN"
 18 ALDABASHI,

19 Plaintiffs,

20 v.

21 DOES 1 through 20, inclusive, and the CITY
 22 OF OAKLAND,

23 Defendant

24 Case No. C08-00217

25 DEFENDANT'S PETITION FOR
 26 REMOVAL TO FEDERAL COURT

18 Petitioner, Defendant CITY OF OAKLAND, states as follows:

19
 20 1. Defendant desires to exercise its rights under the provisions of Title 28
 21 U.S.C. §1441, et seq. to remove this action from the Superior Court of the State of
 22 California, County of Alameda, Unlimited Jurisdiction, where this action is now pending
 23 as Beverly Aldabashi, et al v. Does 1 through 20, et al., Superior Court No.

24 RG07352159.

25

26

1
2. This is an action of a civil nature in which the District Courts of the United
3 States have been given original jurisdiction in that it arises, in part, under the laws of
4 the United States, as provided in 28 U.S.C. §1331 and, further, in that it arises out of
5 Acts of Congress commonly known as 42 U.S.C. §§1983, 1985, 1986 and the Fourth
6 and Fourteenth Amendments to the United States Constitution.
7

8
9. 3. The date on or before which this defendant is required by the California
10 Code of Civil Procedure and the Rules of Alameda County Superior Court to answer or
11 otherwise plead to Plaintiff's Amended Complaint has not lapsed. Plaintiffs' amended
12 complaint was served on Defendant CITY OF OAKLAND on December 13, 2007. The
13 remaining defendants, DOES 1 through 20, have not been served with the complaint.
14 This Petition for Removal is filed in accordance with the requirements of 28 U.S.C.
15 §1446.

16
17. 4. Pursuant to the provisions of 28 U.S.C. §1446, Defendant attaches herewith
18 and incorporates herein by reference, copies of the following documents served upon
19 the parties in this action:

- 20
21 (a) Summons and Amended Complaint for Damages.
22 (b) CITY OF OAKLAND's Answer to the Amended Complaint for Damages.

23
24. 5. As declared above, Defendant CITY OF OAKLAND desires and is entitled to
25 have this action removed from the Superior Court of the State of California for the
26 County of Alameda, Unlimited Jurisdiction, to the United States District Court for the
Northern District of California as such district is the district where the suit is pending

1 and conditioned that Defendant will pay all costs and disbursements incurred by reason
2 of these removal proceedings should it be determined that this action was not
3 removable or was improperly removed.

4 6. Written notice of the filing of this Petition will be given to all parties to this
5 action as required by law.

7 7. A true copy of this petition will be filed with Alameda County Superior Court
8 as provided by law.

9 8. Defendant CITY OF OAKLAND respectfully requests that this action be
10 removed to this court and that this court accept jurisdiction of this action. The
11 aforementioned defendant further requests that this action be placed on the docket of this
12 court for further proceedings as if this action had been originally filed in this court.
13

14
15 Dated: January 7, 2008

16 JOHN A. RUSSO, City Attorney
17 RANDOLPH W. HALL, Assistant City Attorney
18 WILLIAM E. SIMMONS, Supervising Trial Attorney
19 STEPHEN Q. ROWELL, Deputy City Attorney

20 By: 
21 Attorneys for Defendants CITY OF OAKLAND

22
23
24
25
26

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

DOES 1 through 20, inclusive, and the CITY OF OAKLAND, CALIFORNIA,

ENDORSED
FILED
ALAMEDA COUNTY

OCT 19 2007

CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

BEVERLY ALDABASHI, SALEH ALDABASHI, in his own right and as guardian ad litem on behalf of his minor son, SALEH "JULIAN" ALDABASHI

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court, County of Alameda
1225 Fallon Street
Oakland, CA 94612CASE NUMBER:
(Número del Caso): RG07352159

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Saleh Aldabashi, 5037 Sawyer Lake Drive, Arlington, TN 38002, (510) 823-8326

DATE:
(Fecha) OCT 19 2007Clerk, by Esther Coleman, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): *City of Oakland*

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

4. other (specify): municipality

December 13, 2007

Cal
1/14/08
UD

1 BEVERLY ALDABASHI
2 944 W. MacArthur Boulevard
3 Oakland, CA 94608
4 (510) 655-1176

ENDORSED
FILED
ALAMEDA COUNTY

OCT 19 2007

5 SALEH ALDABASHI
6 JULIAN ALDABASHI
5037 Sawyer Lake Drive
Arlington, TN 38002
6 (510) 823-8326

CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

7 Plaintiffs in *Propria Personam*

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ALEMEDA

12 (UNLIMITED CIVIL JURISDICTION)

13 BEVERLY ALDABASHI, SALEH
14 ALDABASHI, in his own right and as
15 guardian *ad litem* on behalf of his minor son,
16 SALEH "JULIAN" ALDABASHI,

Case No. RG07352159

17 Plaintiffs,
18 v.
19 DOES 1 through 20, inclusive, and the CITY
20 OF OAKLAND, CALIFORNIA,
21 Defendants.

22 AMENDED COMPLAINT FOR DAMAGES
23 FOR VIOLATIONS OF CIVIL RIGHTS
24 AND OTHER WRONGS

JURY DEMANDED

I. INTRODUCTION

1. Plaintiffs seek compensatory and punitive damages against the defendant Oakland officials, *inter alia* for shooting and killing their specially trained service dog, Wasco, a German Shepherd who was in every way part of the family, as Ms. Aldabashi stood with Wasco on the front steps of her home, waiting for police whom she herself, in part, had summoned.

1 Ms. Aldabasi summoned police, through her daughter Bianca, following a dispute with
 2 interlopers who had taken up residence in her house (in Ms. Aldabashi's absence) and refused to
 3 leave. One of the squatters assaulted Ms. Aldabashi after she entered her home, but apparently
 4 falsely accused her of assault and may also have called the police. An Oakland Police Officer
 5 (possibly FNU Baker) arrived – and without making any effort to discern what was going on –
 6 opened fire on Wasco while Ms. Aldabashi was still holding him, apparently because the dog
 7 had the temerity to bark. Ms. Aldabashi fell to the ground, dropping the leash, as the officer
 8 continued to fire on Wasco, killing him. Plaintiffs hereby amend once, of right, prior to the
 9 filing of any answer, per CCP § 472.

10 II. JURISDICTION AND VENUE

11 2. This Court has jurisdiction of these claims under the California Constitution, California
 12 Common Law, and California Civil Code §§ 43, 52.1, 52, 1708, 1714(a), and 3333.

13 3. Venue in this Court is proper because the acts complained of occurred in the City of
 14 Oakland and the County of Alameda, California, and the defendants all lived, worked, and/or
 15 conducted business in Oakland at all relevant times.

16 III. PARTIES

17 4. Plaintiff Beverly Aldabashi, an adult citizen, presently resides in the City of Oakland,
 18 County of Alameda, California. Beverly suffers from a thyroid condition, which causes among
 19 other symptoms narcolepsy. The dog, Wasco, helped her to overcome limitations associated
 20 with her condition. She also suffers from extreme emotional distress as a result of this incident.

21 5. Plaintiff Saleh Aldabashi, an adult permanent resident alien, presently resides in
 22 Arlington, TN. Beverly and Saleh Aldabashi were married at the time of this incident, but have
 23 since divorced.

24 6. Plaintiff Saleh "Julian" Aldabashi, a citizen, and the minor son of Beverly and Saleh
 25 Aldabashi, presently resides with his father in Arlington, TN. He was nine years old at the time
 26 of this incident. Julian suffers from severe Attention Deficit/Hyperactivity Disorder
 27 ("A.D.H.D."). The dog, Wasco, helped to alleviate the symptoms of his condition. Julian has
 28 suffered from extreme emotional distress as a result of this incident.

1 7. Defendant DOES 1 though 16, inclusive, are or were at all relevant times Oakland
 2 Police Officers, whether line officers or supervisors, whose identities are unknown at the present
 3 time, although plaintiffs are informed and thereon believe that one of them is an Officer Baker or
 4 Barker. Plaintiffs will move to substitute their true names after they become known.

5 8. Defendant DOES 17 though 20, inclusive, are or were at all relevant times employees
 6 of the City of Oakland whose identities are unknown at the present time. Plaintiffs will move to
 7 substitute their true names after they become known.

8 9. All references within to "individual defendants" mean and refer to natural persons, not
 9 entities, and include all DOE defendants.

10 10. Defendant City of Oakland, California, is a municipal entity incorporated under the
 11 laws of the State of California.

12 **IV. SCOPE OF EMPLOYMENT;
 13 JOINT AND SEVERAL LIABILITY; NON-IMMUNITY**

14 11. The individual defendants, including all individual Doe defendants, carried out the acts
 15 complained of in their individual capacities, under color of state law, in the course and scope of
 16 their employment. The City of Oakland is liable in *respondeat superior* for the intentional torts
 17 of its employees. Cal. Gov't Code § 815.2.

18 12. The defendants are jointly and severally liable for any damages awarded. Under
 19 California Government Code § 825(a), the City and County of San Francisco is obligated to pay
 20 any compensatory damages and costs awarded against their employees.

21 13. Regarding all actions and causes of action herein alleged and stated, all defendants,
 22 including all Doe defendants, violated rights held by plaintiff which were clearly established, and
 23 which they had a mandatory duty to uphold, and no reasonable official similarly situated to any
 24 of the defendants could have believed that his/her conduct was lawful or within the bounds of
 25 reasonable discretion. All individual defendants, including all individual Doe defendants, thus
 26 lack immunity from suit or liability.

27 ///
 28

**V. FACTUAL ALLEGATIONS
COMMON TO ALL CAUSES OF ACTION**

14. Ms. Aldabashi suffers from a thyroid condition which makes her prone to narcolepsy. In addition, she has metal plates in her legs as a result of having been run over as a child which limit her mobility and her ability to bend down. Her son Julian suffers from severe A.D.H.D. The Aldabashi's purchased Wasco, a specially-trained German Shepherd, to assist both Beverly and Julian, including without limitation to bark and get her attention if she fell asleep at inopportune moments, to pick up objects out of her range, and to mollify Julian. The Aldabashi's had had Wasco for a year and a half before the incident. They had become both thoroughly attached to him, as well as dependent on his help.

15. Mr. and Ms. Aldabashi were married at the time of the incident, but have since divorced as a result of the stress and strain caused by the incident. At the time of the incident, they owned a house at 944 W. MacArthur Boulevard in Oakland, CA, and also had a business in Tennessee. While the couple were in Tennessee for an extended period, managing their business, their then 19-year old daughter, Bianca, a student, sought to make some extra cash by renting a room in the house, via Craigslist.com, to a young couple. Soon after they moved in, on or around August 2006, they became overbearing, menaced and threatened Bianca, stole from the Aldabashi's, and, plaintiffs are informed and believe, sold drugs out of the house. The couple never signed a lease or paid any rent. Bianca tried to evict them but they refused to leave. Bianca was in her over head, and admitted her mistake to her mother, who quickly bought a plane ticket to return to Oakland.

16. On or about October 3, 2007, Ms. Aldabashi arrived in Oakland, with Wasco, and went to her house. It was late at night/early in the morning. When Ms. Aldabashi entered her bedroom, someone grabbed her around the neck. She screamed and ran outside, asking Bianca to call the police. Because police were already in the neighbourhood – evidently investigating a homicide up the street – Bianca ran to fetch an officer in person. Meanwhile, Ms. Aldabashi waited outside on the front steps for police to arrive, crying.

1 17. A short while later, Oakland Police Officer Doe #1 (possibly named, or with a name
2 similar to, Baker) arrived in a patrol car – possibly responding to a call from one of the squatters
3 inside the house who had falsely accused Ms. Aldabashi, and/or Wasco, of assault. As the
4 officer exited his car, Wasco, sitting, barked from the steps next to Ms. Aldabashi. Wasco did
5 not charge, and Ms. Aldabashi did not release him. Rather, she had a firm hold of his leash.
6 without saying anything or asking any questions, the officer jumped out of his car and
7 unholstered his gun. Ms. Aldabashi yelled “don’t shoot.” The officer nevertheless opened fire
8 on Wasco in a terrifying fusillade, thereby also aiming in Ms. Aldabashi’s direction. Ms.
9 Aldabashi fell to the ground. Bullet fragments and/or pieces of the steps ricocheted and
10 embedded in Ms. Aldabashi’s body. Only after the officer began shooting did she let go of
11 Wasco. The officer continued firing on Wasco until he was dead. Soon after the shooting, the
12 officer got back in his car and left the scene.

13 18. Police then responded en masse to investigate. Doe #'s 2 through 7, inclusive, detained
14 Ms. Aldabashi against her will in a corner of the yard, and repeatedly told her to shut up, despite
15 the fact that she was an obvious victim, and had committed no wrong. (Plaintiffs do not
16 necessarily allege that all six of these Doe defendants engaged in such conduct, but rather seek to
17 allow sufficient flexibility in the drafting of the complaint to accommodate information gleaned
18 in discovery.) One of these Doe defendants, Doe #2 (a supervising officer), intimidated and
19 pressured Ms. Aldabashi by accusing her of assault and offering not to arrest her in exchange for
20 simply recognizing the incident as a tragic misunderstanding. When Ms. Aldabashi would not
21 succumb to this intimidation, Doe #2 issued her a citation for battery on one of the squatters.

22 19. Thereafter, Ms. Aldabashi filed a complaint with the Oakland Police Department’s
23 Internal Affairs division, where she encountered a very reassuring officer or investigator, who
24 nevertheless seemed powerless to avert the continued abuse which then followed. Doe #'s
25 8 through 13, inclusive, are Oakland Police officers who began coming to the house in pairs to
26 “check on” Ms. Aldabashi (Plaintiff is informed and believe that two of the officers were
27 named, or had names similar to, R. Tisdell (8039P) and J. Biletnikoff (#8011P).) Their method
28 was, instead, intimidating, for the purpose of pressuring her to drop her Internal Affairs

1 complaint and not to file suit. On at least one occasion, these visiting officer(s) gained entrance
 2 via the "permission" of nine year old Julian while Ms. Aldabashi was asleep in her bedroom.
 3 The officers then entered her bedroom, terrifying her. (Plaintiffs do not necessarily allege that
 4 all eight of these Doe defendants engaged in such conduct, but rather seek to allow sufficient
 5 flexibility in the drafting of the complaint to accommodate information gleaned in discovery.)

6 20. In addition, because plaintiff was trying to serve a restraining order on the squatters,
 7 she sought the assistance of the Oakland Police to serve the restraining order. An Officer, Doe
 8 #14, (possibly named, or with a name similar to, Saunderman) came to her house, ostensibly to
 9 assist in serving the restraining order, but then pointedly informed Ms. Aldabashi that he would
 10 not help because she had made a complaint to Internal Affairs.

11 21. The charge(s) against Ms. Aldabashi were dismissed.

12 22. The plaintiff family members have suffered great emotional and monetary damage as a
 13 result of these outrageous actions by the defendant officers.

14 VI. CAUSES OF ACTION

15 ONE: VIOLATION OF CALIFORNIA CIVIL RIGHTS UNDER THE BANE ACT Civil Code §§ 52.1 and 52

16 Beverly Aldabashi against Doe #'s 1 through 14

17 23. Plaintiffs reincorporate by reference the facts set out in ¶¶ 14-22.

18 24. The individual defendants, and each of them, are liable to Beverly Aldabashi for
 19 violating her California civil rights under the Bane Act, by depriving her of her of her
 20 constitutional and statutory rights through threats, intimidation, and coercion, thereby
 21 proximately and foreseeably causing her damage, injury, and loss.

22 25. Doe #1, who shot Wasco while he was attached to and next to Beverly Aldabashi, and
 23 caused bullet fragments to ricochet into her body, interfered, through force and coercion, with
 24 Ms. Aldabashi's rights to due process; to safety, happiness, and a sense of personal well-being;
 25 to be free from excessive force, assault, battery, and bodily harm; to be free from injury to her
 26 personal relations and personal property, to wit, Wasco; and to be free from terrorizing behavior
 27 which shocks the conscience, as protected by Article I, §§ 1, 7 and 13 of the California
 28

1 Constitution, Cal. Civil Code §§ 43 and 1708, and the Fourth and Fourteenth Amendments to the
 2 U.S. Constitution.

3 26. Doe #2, along with Doe #'s 3 through 14, interfered by threats, intimidation, and
 4 coercion – in the manner described in ¶¶ 18-20, with Ms. Aldabashi's rights to due process; to
 5 safety, happiness, and a sense of personal well-being; to be free from false arrest and
 6 imprisonment and bodily restraint; and to be free from terrorizing behavior which shocks the
 7 conscience, as protected by Article I, §§ 1, 7 and 13 of the California Constitution, Cal. Civil
 8 Code § 43, and the Fourth and Fourteenth Amendments to the U.S. Constitution.

9 27. Pursuant to Cal. Civil Code § 52(a), (b), Ms. Aldabashi is entitled to up to three times
 10 her actual damages, to exemplary damages; to a civil penalty of \$25,000 for each violation of her
 11 rights established; and to attorney's fees.

12 **TWO:** SECTION 1983 – UNNECESSARY AND EXCESSIVE FORCE; VIOLATION OF
 13 DUE PROCESS; SHOCKING AND OUTRAGEOUS CONDUCT
 14 42 U.S.C. § 1983; Fourth and Fourteenth Amendments to the U.S. Constitution
 Beverly Aldabashi against Doe #1

15 28. Plaintiffs reincorporate by reference the facts set out in ¶¶ 14-22.

16 29. Doe #1 is liable to Beverly Aldabashi for using unnecessary, unreasonable and
 17 excessive force against her, in violation of her Fourth Amendment rights, by shooting Wasco
 18 while he was attached to and next to her, and causing bullet fragments to ricochet into her body,
 19 without consent, probable cause, reasonable grounds, or other justification, thereby proximately
 20 and foreseeably causing her damage, injury, and loss. Based on the same conduct, Doe #1
 21 violated Ms. Aldabashi's Fourth Amendment rights to substantive and procedural due process,
 22 and to be free from terrorizing, shocking, and outrageous conduct.

23 **THREE:** ASSAULT AND BATTERY
 24 California Common Law; Cal. Penal Code §§ 835 and 835a
 Beverly Aldabashi against Doe #1

25 30. Plaintiffs reincorporate by reference the facts set out in ¶¶ 14-22.

26 31. Doe #1 is liable to Beverly Aldabashi for assaulting and battering her, in violation of
 27 her rights under California Common Law, and in derogation of Penal Code §§ 835 and 835a, by
 28

1 shooting Wasco while he was attached to and next to her, and causing bullet fragments to
 2 ricochet into her body, without consent, probable cause, reasonable grounds, or other
 3 justification, thereby proximately and foreseeably causing her damage, injury, and loss.

4 **FOUR:** SECTION 1983 – UNLAWFUL DETENTION

5 42 U.S.C. § 1983; Fourth Amendment to the U.S. Constitution

6 Beverly Aldabashi against Doe #s 1 through 7

7 32. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

8 33. Doe #s 1 through 7 are liable to Beverly Aldabashi for illegally detaining her in a
 9 corner of her yard – in the manner described in ¶ 18 – in violation of her rights under the Fourth
 10 Amendment, without consent, reasonable suspicion, probable cause, reasonable grounds, or other
 11 justification, thereby proximately and foreseeably causing her damage, injury, and loss.

12 **FIVE:** FALSE ARREST AND IMPRISONMENT

13 California Common Law

14 Beverly Aldabashi against Doe #s 1 through 7

15 34. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

16 35. Doe #s 1 through 7 are liable to Beverly Aldabashi for falsely arresting and imprisoning
 17 her in a corner of her yard – in the manner described in ¶ 18 – in violation of her rights under
 18 California Common Law to be free from false arrest and imprisonment, without consent,
 19 reasonable suspicion, probable cause, reasonable grounds, or other justification, thereby
 20 proximately and foreseeably causing her damage, injury, and loss.

21 **SIX:** SECTION 1983 – UNLAWFUL SEIZURE AND DESTRUCTION OF PROPERTY

22 42 U.S.C. § 1983; Fourth and Fourteenth Amendments to the U.S. Constitution

23 Beverly and Saleh Aldabashi against Doe #1

24 36. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

25 37. Doe #1 is liable to Beverly and Saleh Aldabashi for violating their Fourth and
 26 Fourteenth Amendment rights by seizing, shooting, killing, and destroying Wasco, their valuable
 27 property, for which they paid approximately \$12,000, without consent, probable cause,
 28 reasonable grounds, or other justification, thereby proximately and foreseeably causing this loss.

///

SEVEN: MALICIOUS PROSECUTION
California Common Law
Beverly Aldabashi against Doe #s 2

38. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

39. Doe #2 is liable to Beverly Aldabashi for malicious prosecution under California Common Law, for citing her for battery, for the malicious and ulterior purposes of trying to intimidate her, silence her, and thwart her from pursuing any complaints against the police; retaliating against her when she would not be silenced; and/or covering up, diverting attention from, or preventing redress of the police malfeasance, where Doe #2 lacked reasonable cause to believe that Ms. Aldabashi had committed a battery. He thereby proximately and foreseeably caused Ms. Aldabashi damage, injury, and loss. The prosecution of Ms. Aldabashi terminated in her favor – i.e., the charge(s) were dismissed.

**EIGHT: SECTION 1983 – TRESPASS TO CHATTELS; CONVERSION
California Common Law; Civil Code §§ 43 and 1708
Beverly and Saleh Aldabashi against Doe #1**

40. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

41. Doe #1 is liable to Beverly and Saleh Aldabashi for violating their rights under California Common law, and Civil Code §§ 43 and 1708, by seizing, shooting, killing, and destroying Wasco, their valuable property, for which they paid approximately \$12,000, without consent, probable cause, reasonable grounds, or other justification, thereby proximately and foreseeably causing this loss.

NINE: INTENTIONAL AND NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS
California Common Law
Beverly and Julian Aldabashi against Doe #s 1-14

42. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

43. As a result of engaging in the shocking and outrageous conduct described in ¶s 17-20, defendants, and each of them, are liable under California Common Law for proximately and foreseeably causing Beverly and Julian Aldabashi each extreme emotional distress. The actions of defendants – in terrifyingly and senselessly killing beloved Wasco in such proximity to

1 Ms. Aldabashi that she was also hit with fragment, then falsely detaining her and blaming her for
 2 the ordeal, then intimidating her in an effort to render her silent – have destroyed her marriage,
 3 caused her estrangement from her children, and left her in a persistent state of trauma. Julian, in
 4 turn, continues to sufferer extreme emotional distress over the loss of his mother, and the loss of
 5 his companion, Wasco, both of which have exacerbated his underlying condition.

6 **TEN: LOSS OF CONSORTIUM**

7 California Common Law

8 Beverly, Saleh, and Julian Aldabashi against Doe #s 1-14

9 44. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

10 45. As a result of engaging in the shocking and outrageous conduct described in ¶s 17-20,
 defendants, and each of them, are liable under California Common Law for proximately and
 11 foreseeably causing loss of consortium between Beverly Aldabashi and each of the other two
 12 plaintiffs. The actions of defendants – in terrifyingly and senselessly killing and depriving the
 13 family of the necessary assistance of beloved Wasco, then falsely detaining her and blaming her
 14 for the ordeal, then intimidating her in an effort to render her silent – so traumatized

15 Ms. Aldabashi as to put irrevocable stress on her marriage, ending in divorce, and to estrange her
 16 from her children. Julian continues to sufferer extreme emotional distress over the loss of his
 17 mother in his life.

18 46. To the extent the court will recognize a loss of consortium claim predicated on the loss
 19 of a Wasco, both a beloved pet and highly trained and necessary service dog, Doe #1 is also
 20 liable to plaintiffs Beverly and Julian Aldabashi for loss of consortium for killing Wasco.

21 **ELEVEN: NEGLIGENCE AND GROSS NEGLIGENCE**

22 California Common Law; Cal. Civil Code § 1714(a)

23 Beverly, Saleh, and Julian Aldabashi against all individual defendants

24 47. Plaintiffs reincorporate by reference the facts set out in ¶s 14-22.

25 48. Based on the conduct described in ¶s 17-20, defendants, and each of them, are liable to
 the above-named plaintiffs for breaching duties to plaintiffs to exercise reasonable care in the
 26 performance of their official duties, including without limitation their duties to abstain from
 27 recklessly discharging a firearm, from wantonly taking the life of Wasco, from detaining
 28

1 Ms. Aldabashi without reasonable suspicion or probable cause, and from threatening and
 2 intimidating Ms. Aldabashi in an effort to discourage her from vindicating her rights. As a
 3 result, defendants proximately and foreseeably caused plaintiffs' injuries, damages and losses.

4 49. Doe #'s 15-16 are, or were at all relevant times, Oakland Police supervisors who are
 5 liable to plaintiffs for negligently hiring, training, supervising, and/or retaining Doe #'s 1-14.

6 **TWELVE:** CONSPIRACY, COVER-UP AND FAILURE TO INTERVENE

7 42 U.S.C. §§ 1985 and 1986; Federal Common Law

8 Beverly, Saleh, and Julian Aldabashi against all individual defendants

9 50. Plaintiffs reincorporate by reference the facts set out in ¶¶s 14-22.

10 51. Defendants, and each of them, are liable to plaintiffs for distorting and covering up the
 11 truth about the wrongs they committed, both individually and by conspiring with one another
 12 and/or others. Their overt acts include, without limitation: Doe #1's leaving the scene shortly
 13 after he shot Wasco; the false detention of Ms. Aldabashi by Doe #'s 2 through 7; the intimidation
 14 of Ms. Aldabashi by Doe #'s 8-14, and their retaliation against her for filing an Internal Affairs
 15 complaint; false reporting and testifying, both affirmatively and through omission, by Doe #'s 1-
 16 14, in both their written reports and their accounts to Internal Affairs; and the failure to intervene
 17 to prevent or correct one another's misconduct and malfeasance by Doe #'s 1-14.

18 **VII. RESPONDEAT SUPERIOR**

19 52. The City of Oakland is liable in *respondeat superior* for the intentional torts of its
 20 employees, including the Doe defendants herein. Cal. Gov't Code § 815.2.

21 **VIII. JURY TRIAL DEMAND**

22 53. Plaintiffs demand a trial by jury as to each and every claim against each and every
 23 defendant.

24 **IX. DAMAGES AND PRAYER FOR RELIEF**

25 54. WHEREFORE, plaintiffs, and each of them, pray for relief as follows:

- 26 - for general and special compensatory damages (including direct, indirect, and
 27 emotional damages), presumed damages, and nominal damages, well in excess of the
 jurisdictional minimum of \$25,000, in amounts to be determined by the trier of fact;

- 1 - for punitive (exemplary) damages against the individual defendants, in amounts to be
- 2 determined by the trier of fact;
- 3 - for three times the actual damages awarded, and for a civil penalty of \$25,000 for each
- 4 violation which occurred, pursuant to Cal. Civil Code §§ 52.1 and 52(a), (b);
- 5 - for reasonable attorney's fees and costs and expenses of litigation, pursuant to
- 6 42 U.S.C. § 1988(b), CCP § 1021.5, and Civil Code § 52(b)(3); and
- 7 - for such other relief as the Court deems just and proper.

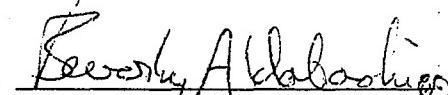
X. DEFAULT DAMAGES

In the event defendants do not answer this amended complaint, plaintiffs will seek an order of default and default judgment in the amount of at least \$286,000, representing \$25,000 for each of the ten total substantive claims pleaded by the three plaintiffs herein, plus three times the estimated cost of Wasco (\$36,000), per the Bane Act's civil penalty and treble damages provisions, Civil Code §§ 52.1 and 52(a), (b), plus costs and attorney's fees.

This complaint is not intended to be the verified statement(s) of the parties, despite the fact that plaintiffs' signatures appear below. This complaint was drafted for plaintiffs by an attorney, not by plaintiffs themselves.

Respectfully Submitted,

DATED: October 19, 2007


BEVERLY ALDABASHI
Plaintiff in *Propria Personam*

DATED: October 19, 2007


SALEH ALDABASHI
for himself (in *Propria Personam*) and on
behalf of his minor son Saleh "Julian"
Aldabashi

EXHIBIT B

1 JOHN A. RUSSO, City Attorney - State Bar #129729
2 RANDOLPH W. HALL, Asst. City Atty. - SB #080142
3 WILLIAM E. SIMMONS, Supervising Trial Atty.- SB #121286
4 STEPHEN Q. ROWELL, Senior Deputy City Atty.- SB #098228
5 One Frank Ogawa Plaza, 6th Floor
6 Oakland, California 94612
Telephone: (510) 238-3865 Fax: (510) 238-6500
25815/428149

Attorneys for Defendant
CITY OF OAKLAND

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA-UNLIMITED JURISDICTION**

11 BEVERLY ALDABASHI, SALEH
12 ALDABASHI, in his own right and as
guardian *ad litem* guardian *ad litem* on
behalf of his minor son, SALEH
13 "JULIAN" ALDABASHI.

14 Plaintiffs

15

16 DOES 1 through 20, inclusive, and the
CITY OF OAKLAND,

Defendant.

Defendants

Case No. RG07352159

**ANSWER OF THE CITY OF OAKLAND TO
AMENDED COMPLAINT**

Defendant CITY OF OAKLAND answers the First Amended Complaint on
file herein, as follows:

Under the provisions of Section 431.30(d) of the California Code of Civil Procedure, defendants generally deny each and every allegation set forth in said complaint.

1 JOHN A. RUSSO, City Attorney - State Bar #129729
2 RANDOLPH W. HALL, Asst. City Atty. - SB #080142
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Telephone: (510) 238-3865 Fax: (510) 238-6500
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6 Attorneys for Defendant
CITY OF OAKLAND

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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11 BEVERLY ALDABASHI, SALEH
12 ALDABASHI, in his own right and as
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13 "JULIAN" ALDABASHI.

14 || Plaintiffs,

15

16 DOES 1 through 20, inclusive, and the
CITY OF OAKLAND,

Defendant,

Defendants.

Case No. RG07352159

**ANSWER OF THE CITY OF OAKLAND TO
AMENDED COMPLAINT**

Defendant CITY OF OAKLAND answers the First Amended Complaint on
file herein, as follows:

1

Under the provisions of Section 431.30(d) of the California Code of Civil Procedure, defendants generally deny each and every allegation set forth in said complaint.

1
2 **AFFIRMATIVE DEFENSES**
3

4 **II.**
5

6 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**, defendant alleges that
7 plaintiffs fail to state a claim upon which relief can be granted.
8

9 **III.**
10

11 **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**, defendant alleges
12 that the damages of which plaintiffs complain, if any, resulted from the acts and/or
13 omissions of plaintiffs themselves, or of others, and without any fault on their part.
14

15 **IV.**
16

17 **AS AND FOR A THIRD AFFIRMATIVE DEFENSE** defendant alleges that it
18 is immune from liability by operation of California Government Code Sections 820.2, and
19 820.4, in that the acts of its agents and employees were proper exercises of their
20 discretionary authority.
21

22 **V.**
23

24 **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**, defendant alleges that
25 all actions taken by defendant and its agents and employees were undertaken in good
26 faith and with the reasonable belief that said actions were valid, necessary and
constitutionally proper.

27 **VI.**
28

29 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**, defendants allege that all
30 public employees acting for or on behalf of the City of Oakland were duly authorized
31 peace officers acting in good faith, without malice, in the exercise of their discretion to
32

1 enforce the law; that said officers had reasonable and probable cause to believe that
2 plaintiff Beverly Abash did or was about to commit a crime; that only that amount of force
3 was used which was necessary and reasonable under the circumstances; and that said
4 Amended Complaint is barred by the provisions of Government Code sections 815,
5 815.2, 818, 818.2, 820, 820.2, 820.3, 820.6, 820.8, 821.6, 844, 844.6, 845, 845.2, 845.4
6 and 845.6, as well as all privileges, immunities and protections afforded by Federal law.
7

8 **VII.**

9 **AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE,** defendants, their
10 agents and employees, acted in good faith and without malice and had reasonable cause
11 to believe that plaintiff Beverly Abash had committed a violation of law.
12

13 **VIII.**

14 **AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,** defendant officers
15 had probable cause to arrest plaintiff Beverly Aldabashi.
16

17 **IX.**

18 **AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE,** defendant "DOE"
19 officers used justifiable and reasonable force to defend themselves or others from serious
20 bodily injury or death.
21

22 **X.**

23 **AS AND FOR A NINTH AFFIRMATIVE DEFENSE,** defendant alleges that
24 plaintiffs' damages, if any, are barred to the extent that they have failed to mitigate them.
25
26

1
2 **XII.**

3 **AS AND FOR A TENTH AFFIRMATIVE DEFENSE**, defendants are entitled
4 to absolute or qualified immunity and/or privilege.

5 **XIII.**

6 **AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**, defendant alleges
7 that this action is subject to the damages limitations and conditions set forth in Civil Code
8 § 3333.1, 3333.2, and Code of Civil Procedure § 667.7.

9 **VII.**

10 **AS A FURTHER, TWELTH, SEPARATE AND AFFIRMATIVE DEFENSE**,
11 defendant alleges that it is not liable for punitive damages pursuant to Government Code
12 section 818.

13 **VIII.**

14 **AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE**
15 **DEFENSE**, defendant alleges that all of the actions of defendant "DOES" were
16 undertaken in good faith and with the reasonable belief that such actions were valid,
17 necessary, reasonable, lawful and constitutionally proper, entitling defendants "DOES" to
18 the qualified immunity of good faith.

19 **IX.**

20 **AS A FURTHER, FOURTEENTH, SEPARATE AND AFFIRMATIVE**
21 **DEFENSE**, defendant alleges that, if it in any fashion caused the injuries or damages
22 alleged, although such liability is expressly denied herein, its acts and/or omissions were
23 reasonable and privileged

24 **XIV.**

25 **AS AND FOR FIFTEENTH A AFFIRMATIVE DEFENSE**, defendant alleges
26

1 that, to the extent that the Amended Complaint is couched in conclusory terms, defendant
2 cannot, at this time, fully anticipate all potentially applicable affirmative defenses, and
3 accordingly, the right to assert additional affirmative defenses is hereby reserved.
4

5 **XV.**

6 WHEREFORE, defendants pray that:

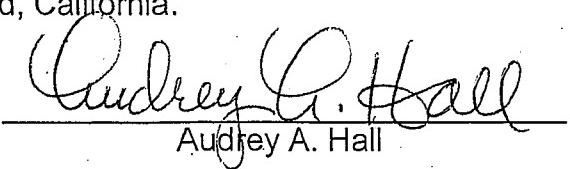
- 7 1. Plaintiff take nothing by his Complaint;
8 2. Defendants have judgment against Plaintiff;
9 3. Defendants be awarded its costs of suit; and
10 4. For such other and further relief as the Court may deem proper.

11 DATED: January 4, 2008

12 JOHN A. RUSSO, City Attorney
13 RANDOLPH W. HALL, Assistant City Attorney
14 WILLIAM E. SIMMONS, Supervising Trial Attorney
15 STEPHEN Q. ROWELL, Senior Deputy City Attorney

16 By: 

17 Attorneys for Defendant
18 CITY OF OAKLAND

1 PROOF OF SERVICE
2 Beverly Aldabashi, et al. v. City of Oakland, et al.
3 Alameda County Superior Court Case No. RG07-352159
4
5 I am a resident of the State of California, over the age of eighteen years, and not a
6 party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza,
7 6th Floor, Oakland, California 94612. On the date set forth below I served the within
8 documents:
9
10 ANSWER OF THE CITY OF OAKLAND TO AMENDED COMPLAINT
11
12 by transmitting via facsimile the document(s) listed above to the fax
13 number(s) set forth below, or as stated on the attached service list, on
14 this date before 5:00 p.m.
15 by placing the document(s) listed above in a sealed envelope with
16 postage thereon fully prepaid, in the United States mail at Oakland,
17 California addressed as set forth.
18 by causing personal delivery by (name) of the document(s) listed above to
19 the person(s) at the address(es) set forth below.
20 by personally delivering the document(s) listed above to the person(s) at
21 the address(es) set forth below.
22 by causing such envelope to be sent by Federal Express/ Express Mail.
23
24 Omar Krashna, Esq.
25 KRASHNA LAW FIRM
26 1440 Broadway, Suite 308
Oakland, CA 94612
27
28 I am readily familiar with the City of Oakland's practice of collection and processing
29 correspondence for mailing. Under that practice it would be deposited with the U.S.
30 Postal Service on that same day with postage thereon fully prepaid in the ordinary course
31 of business.
32
33 I declare under penalty of perjury under the laws of the State of California that the
34 above is true and correct.
35
36 Executed on January 4, 2008, at Oakland, California.
37
38 
39 _____
40 Audrey A. Hall
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Transmission Log

No. Station Name

Friday, 2008-01-04 14:49

(510) 238-6500

Job #	Date	Time	Length	Speed	Station Name/Number	Type	Pgs	Status
03303	2008-01-04	14:48	1:06	26400	Fax Server	SCAN	7	OK -- V.34 AM11

MC-005

ATTORNEY OR PARTY WITHOUT ATTORNEY (Initial, State Bar number, and address): JOHN A. RUSSO, CITY ATTORNEY, SB#129729 RANDOLPH W. HALL, ASST. CITY ATTORNEY, SB#080142 STEPHEN O. ROWELL, SR. DEPUTY CITY ATT., SB#098228 One Frank Ogawa Plaza, 6th Floor - Oakland, CA 94612		FOR COURT USE ONLY	
TELEPHONE NO.: (510) 238-3865 FAX NO. (Optional) (510) 238-6500			
MAIL ADDRESS (Optional): ATTORNEY FOR (Name): CITY OF OAKLAND			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: Same CITY AND ZIP CODE: Oakland, California 94612 HONORABLE NAME:			
PLAINTIFF/PETITIONER: BIVIRLY ALDABASII, et al.		CASE NUMBER	
DEFENDANT/RESPONDENT: CITY OF OAKLAND, et al.		RG07-352159	
FACSIMILE TRANSMISSION COVER SHEET			

TO THE COURT:

1. Please file the following transmitted documents in the order listed below:

Document nameNo. of pages

ANSWER TO AMENDED COMPLAINT

6

2. Processing instructions consisting of: _____ pages are also transmitted.

3. Fee required Filing fee Fax fee (rule 2006(g))

a. Credit card payment I authorize the above fees and any amount imposed by the card issuer or draft purchaser to be charged to the following account:

VISA MASTERCARD Account No.:

Expiration date:

(Type or print name of cardholder)

(Signature of cardholder)

- b. Attorney account (rule 2006(l)). Please charge my account no.: